

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

**VIRNETX INC. AND
SCIENCE APPLICATIONS
INTERNATIONAL CORPORATION**

Plaintiffs,

v.

APPLE INC.,

Defendant.

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**Civil Action No. 6:12-cv-855-RWS
LEAD CONSOLIDATED CASE**

JURY TRIAL DEMANDED

NOTICE OF PARTIES' AGREED TRIAL PROCEDURES

The Parties have met and conferred and agree upon the following trial management procedures:

1. The parties will exchange by email copies of **all documentary, graphic, slide, animation, boards, and any other form of Demonstratives** they plan to use at trial for use during direct examination or opening—but not for cross-examination—and an identification of witnesses each such Demonstrative will be used with on direct examination, by 7:00 p.m. the night before their intended use. In other words, if a demonstrative will be used on a Wednesday, it must be exchanged or made available by 7:00 p.m. on the previous Tuesday. The parties shall exchange objections to these demonstratives by 9:00 p.m. on the day the exhibits are received. Demonstratives exchanged will not be used by the opposing party prior to being used by the disclosing party.

- a. **“Demonstratives”** are exhibits specifically created for the purpose of the trial and ***do not include*** (1) demonstratives exhibits created in the courtroom during testimony or opening at trial, (2) the blowup

(enlargement), highlighting, ballooning, etc. of trial exhibits or transcripts of testimony, or (3) demonstratives previously displayed in the course of the trial. Reasonable non-substantive edits or corrections of typographical and similar errors to demonstrative exhibits may be made to such exhibits prior to use.

- b. However, Demonstratives for direct examination and opening and trial exhibits must be cleared of outstanding objections before being shown to the jury. Additionally, any transcripts of testimony (excluding testimony given during this trial) must be cleared of outstanding objections before being shown to the jury during opening or on direct examination. On cross-examination, transcripts of testimony may be used so long as it is not in violation of a motion in limine or other exclusionary order, regardless of whether it was previously designated by the parties.

2. The parties will make available for inspection **all non-documentary demonstratives or live product demonstrations, such as physical exhibits**, physical prior art or physical products, they plan to use at trial for use during direct examination or opening—but not for cross-examination— by 7:00 p.m. two nights before their intended use. In other words, if a non-documentary demonstrative will be used on a Wednesday, it must be exchanged or made available by 7:00 p.m. on the previous Monday. The parties shall exchange objections to these non-documentary demonstratives or live product demonstrations by 7:00 p.m. the night before their intended use. Materials exchanged or made available under this paragraph will not be used by the opposing party prior to being used by the disclosing party.

3. The parties will exchange by email lists of **exhibits** they intend to use during direct examination or by witnesses called by designation by 7:00 p.m. the night before their intended use, and an identification of the witnesses each such exhibit will be used with on direct examination or by designation. The parties shall exchange objections to these exhibits, to the extent not pre-admitted, by 9:00 p.m. on the day the exhibits are received.

4. The parties will identify by email **witnesses** to be called live or by deposition (in the order of call) at 7:00 p.m., two days in advance of the day of trial during which the witnesses will testify. In other words, if a witness will testify on a Wednesday, the witness must be identified by 7:00 p.m. on the previous Monday.

5. For deposition designations, the parties will provide a list of any deposition designations the party intends to present by 6:30 pm two days before the designation is to be read or played. Counter-designations and objections to the 6:30 pm designations are due by 9:00 p.m. the same evening, and any unresolved objections will be raised with the Court the next morning. The party that seeks to read or play the deposition testimony must also provide the opposing party by 7 p.m. one day before the deposition testimony is to be played, a workable copy of the actual recordings to be played (or testimony to be read), including all designations and counter-designations. The parties shall cooperate in good faith to prepare the designated portions of the depositions for presentation at trial. The time available for each side's trial presentation shall be reduced by the length of its designations or counter-designations actually played or read at trial. If played, such time shall be measured by the amount of time of each party's designations. If read, such time shall be measured by the lines of testimony each party designates as a percentage of the total number of lines read.

6. The parties agree to continue to meet and confer to resolve any objections to the other party's deposition designations and exhibits. The parties agree to endeavor to enter into stipulations as to the authenticity and use of produced documents following the exchange of exhibit lists and objections.

7. The parties agree that any exhibit listed on a party's own exhibit list as to which no objection remains pending at the time of opening statements may be shown to the jury by that party during opening statements if the exhibit will be the subject of testimony and explained to the jury by a witness at trial.

8. The parties agree to exchange lists of "Admitted Exhibits" by 10:00 p.m. the night before the lists are to be submitted to the Court.

9. The parties will meet and confer regarding demonstratives, exhibits, and deposition objections at 9:15 p.m. the night the responding party provides their objections.

Dated: January 18, 2016

/s/ Jason D. Cassady

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Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that all counsel of record who have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system pursuant to Local Rule CV-5(a)(3) on this the 18th day of January 2016.

/s/ Jason D. Cassady

Jason D. Cassady